IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

MFA.No. 1087 of 1998(B)

OPMV.486/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANTS: PETITIONERS
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1. **SUHARA AZEEZ, W/O. LATE AZEEZ,**
   MADATHIL HOUSE, KUTTAMASSERY,
   THOTTUMUGHAM P.O., ALUVA.

2. **FESSY, S/O. LATE AZEEZ, MADATHIL HOUSE,**
   KUTTAMASSERY, THOTTUMUGHAM PO., ALUVA.

3. **FENY (MINOR), AGED 15 YEARS, S/O. LATE AZEEZ**
   MADATHIL HOUSE, KUTTAMASSERY,
   THOTTUMUGHAM P.O., ALUVA.

4. **FEMINA, (MINOR), AGED 13 YEARS,**
   D/O. LATE AZEEZ, MADATHIL HOUSE,
   KUTTAMASSERY , THOTTUMUGHAM P.O. ALUVA.

5. **SHIYAS (MINOR), AGED 11 YEARS,**
   S/O. LATE AZEEZ, MADATHIL HOUSE,
   KUTTAMASSERY , THOTTUMUGHAM P.O., ALUVA
   (APPELLANTS 3 TO 5 (MINORS) REP.BY 1ST APPELLANT
   SUHARA AZEEZ

BY ADV. SRI.DINESH MATHEW J.MURICKEN

M.F.A. NO.1087/1998

RESPONDENTS: RESPONDENTS
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1. **A.S.SURESH KUMAR, MUTTATHIL HOUSE, WEST KADUNGALLOOR P.O., ALUVA 2.**

2. **JAYA RAJAN, S/O. PADMANABHAN, PAYYAPPILLY PARAMBIL, MUPPATHADAM, KADUNGALLOOR , ALUVA 2.**

3. **THE NEW INDIA ASSURANCE CO. LTD. KOCHI 11.**

BY ADV. SRI.VPK.PANICKER

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.1087 OF 1998 (B)

Dated 3rd August, 2007

JUDGMENT

Koshy, J.

The husband of the 1st appellant at the age of 37 died in a motor accident. She along with four children and mother of the deceased filed an application for compensation of Rs.15,00,000/-. Tribunal found that accident occurred due to the negligence of the 2nd respondent in driving the bus owned by the 1st respondent and insured by the 3rd respondent Insurance company. However, only Rs.3,62,000/- was awarded as compensation. The only question disputed in this appeal is the quantum of compensation.

2. Tribunal has taken only Rs.2,500/- as the monthly income and then deducted $^{1}/_{3}$rd and taken only Rs.1,700/- as the loss of dependency. It is contended that petitioner was having lorry service and also a Hollow blocks factory called "Madathil Hollow Blocks". It was also stated that he had two lorries and he was also paying regularly the hire purchase amount. The balance sheet was produced as Ext.A7. According to the claimants his monthly income was more than Rs.15,000/-

per month. The evidence adduced by PW1 was also proved to that effect. But without any material evidence, tribunal fixed the monthly income only at Rs.2,500/- and then deducted to find out the monthly dependency income at Rs.1,700/-. It is contended that he was maintaining wife and four children and the assessment of the monthly income was very low. Considering the fact that he was a business man having Hollow blocks factory and lorries and he was regularly paying income tax and hire purchase amount and considering the balance sheet, we are of the opinion that at least Rs.2,500/- can be fixed as loss of dependency per month. He was 37 years old. A three member bench of the Supreme Court in ***Smt.Supe Dei and others v. M/s. National Insurance Company Ltd. and another (JT 2002 (Suppl.1) SC 451)***, held that the second schedule of the Motor Vehicles Act is framed for the purpose of awarding compensation under Section 163-A, but, it serves as a guideline for determination of compensation under Section 166 of the Motor Vehicles Act. So taking 2nd schedule as guideline, 16 is the apt multiplier. If that be so, the compensation payable for loss of dependency is Rs.2,500 x 12 x 16 = 4,80,000/-. Tribunal has awarded only Rs.3,62,000/-. So the additional compensation payable will be Rs.1,18,000/-. Even though it was argued that

compensation under other heads are very meager, we are not enhancing the compensation under the other heads. The above amount of Rs.1,18,000/- should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till deposit and on deposit of the above, appellants are free to withdraw the same. Accordingly this appeal is partly allowed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.1087 OF 1998 (B)

JUDGMENT

Dated 3rd August, 2007